

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

FRANK FISHER, a single man,

Plaintiff,

v.

J. BYRON HOLCOMB and JANE DOE
HOLCOMB, a marital community,

Defendants.

CASE NO. C10-5510BHS

ORDER GRANTING MOTION
FOR MONEY JUDGMENT
FOR ATTORNEY FEES AND
COSTS AND MOTION TO
HONOR PRAECIPE

This matter comes before the Court on Plaintiff's ("Fisher") motions to reduce award of fees and costs to judgment (Dkt. 34) and motion (Dkt. 35) for an order directing the clerk to honor praecipe to send a certified copy of the September 1, 2010, order of remand (Dkt. 29) to the clerk of the Kitsap County Superior Court. The Court has considered the pleadings filed in support of and in opposition to the motions and the remainder of the file and hereby grants Fisher's motions for the reasons stated herein.

I. FACTUAL AND PROCEDURAL HISTORY

On September 1, 2010, the Court remanded this matter to state court for lack of subject matter jurisdiction. Dkt. 29. On September 7, 2010, Defendants (collectively "Holcomb") appealed. Dkt. 30. On October 26, 2010, the Court issued a minute order informing the parties that it would not rule on any pending motions until Holcomb's appeal was resolved and the Ninth Circuit issued its mandate. Dkt. 43.

On September 14, 2010, Fisher moved the Court to award fees and costs for having to litigate this removal matter in the absence of subject matter jurisdiction. Dkt.

34. On September 24, 2010, Holcomb opposed the motion (Dkt. 37), and on October 1, 2010, Fisher replied (Dkt. 39).

On September 16, 2010, Fisher moved the Court for an order directing the clerk to honor its praecipe to send a certified copy of the Court's prior order (Dkt. 29) remanding the matter. Dkt. 35. On September 24, 2010, Holcomb opposed the motion (Dkt. 36), and on October, 1, 2010, Fisher replied (Dkt. 40).

On November 2, 2010, the United States Court of Appeals for the Ninth Circuit affirmed this Court's order to remand. Dkt. 44 (denying Defendants' appeal and finding the appeal to be frivolous). On November 24, 2010, the Ninth Circuit issued its mandate with regard to the order denying Holcomb's appeal, which returned jurisdiction to this court for disposition of any pending motions. Dkt. 45.

II. DISCUSSION

A. Fisher's Motion for Fees and Costs

Fisher moves the Court to award "fees and costs in the amount of \$15,344.19¹ in favor of [Fisher] and against [Holcomb]." Dkt. 34 (attaching accounting for fees and costs).² The Court previously remanded this matter for lack of subject matter jurisdiction. Dkt. 29. Within that remand order, the Court concluded that no basis in law or fact justified Holcomb's removal of this matter to federal court. Based on that finding, the Court ordered that "Holcomb must pay reasonable attorney fees and costs" pursuant to 28 U.S.C. 1447(c). Dkt. 29 at 2; *see also* Fed. R. Civ. P. 52(d)(2)(C) (permitting district court to determine liability for attorney fees and costs before entering the money judgment).

¹This amount reflects \$14,808.75 in attorney fees and \$535.44 in costs.

²The Court has reviewed Fisher's accounting of its attorney fees and costs associated with litigating the motion for remand and finds the amount of \$15,344.19 to be reasonable.

1 In opposition, Holcomb fails to articulate a basis on which to deny Fisher's motion
 2 for judgment on fees and costs. *See* Dkt. 37. The Court agrees with Fisher that § 1447(c)
 3 provides this Court with authority to award fees and costs associated with a case
 4 wrongfully removed to federal court, as is the case here.

5 Based on the foregoing, the Court awards a money judgment for the fees and costs
 6 (\$15,344.19) associated with Holcomb's wrongfully removed, if not frivolously removed,
 7 case.

8 **B. Fisher's Motion to Honor Praecipe**

9 The Court orders the Clerk to mail a "certified copy of the order of remand . . . to
 10 the clerk" of the Kitsap County Court so that "[t]he State Court may thereupon proceed
 11 with [this] case." 28 U.S.C. 1447(c).³


12 **III. ORDER**

13 Therefore, it is hereby **ORDERED** that:

14 1. The Court **GRANTS** Fisher's motion for fees and costs (Dkt. 34). The
 15 Clerk **SHALL PREPARE AND ENTER JUDGMENT** in favor of Fisher in the total
 16 amount of \$15,344.19 against J. Byron Holcomb and Jane Doe Holcomb, husband and
 17 wife, to bear interest at the post-judgment statutory rate.

18 2. The Clerk **SHALL SEND** a certified copy of the Court's order on remand
 19 (Dkt. 29) to the clerk of the Kitsap County Court.

20 DATED this 3rd day of December, 2010.

21
 22 
 23 _____
 24 BENJAMIN H. SETTLE
 25 United States District Judge
 26

27 ³To prevent the order of remand from being enforced requires a stay or supersedeas bond
 28 to be obtained; Holcomb obtained neither. *See* Fed. R. App. Pro. 8, Fed. R. Civ. P. 62.